

REMARKS

Applicant submits that new claims 13-20 overcome the rejections in the Office Action dated March 30, 2003.

The rejection of claim 14 (formerly claim 11) under 35 U.S.C. §112, second paragraph, has been overcome by specifically stating that the solvating agent is water.

Claim 13 (formerly claim 1) stands rejected under 35 U.S.C. 102(b) as being anticipated by Kristinsson (U.S. 4,931,439).

The Examiner states that in Example P.3 of Kristinsson, teaches the process for making pymetrozine and uses ethanol as solvent, water and ether in the process of isolation of pymetrozine.

According to Kristinsson, example P.3, pymetrozine was brought into contact with ethanol and diethylether, **not however with water**. The compound in the example was dried and obtained as a solvent- and **water-free** product. In addition, even if there was an indication that pymetrozine takes up water from the atmosphere, there is no hint in the prior art that the compound takes up between 16 and 17% by weight of water, which corresponds to two moles, as recited in Claim 13 (dihydrate). It is therefore certainly not a case of anticipation as the Examiner suggests. Anticipation means that the person who is having ordinary skill in the art immediately envisages one species - in the present case the dihydrate - out of a very small generic group when reading the state of the art document. One could imagine the said PHOSITA envisages a (mono-)methanol or a (mono-)diethylether derivative, certainly not however a dihydrate, which turned out to be a stable species. There is no teaching in Kristinsson that said species is stable, hence, the cited decisions cannot be applied.

The pure (unformulated) waterfree compound pymetrozine was at no stage in the public domain, only formulated material has been sold to the consumers (known as "Chess"). Therefore, even if the compound does spontaneously take up water, the essentially pure dihydrated form (specifically the dihydrate) was never in the public domain and is not anticipated by the cited reference.

Claim 13 (formerly claim 1) stands rejected under 35 U.S.C. 103(a) as being obvious in view of Kristinsson (U.S. 4,931,439).

Newly added claims 15-17 describe the preparation methods according to which the dihydrate material of the present invention can be produced. Compositions having been produced according to these methods do have the advantage ("spontaneity") described on pages 8 to 10 of the specification, whereas the essentially waterfree formulation ("Chess") which has afterwards spontaneously taken up water, does not show the advantage, despite the water content being the

same, see table on page 10. The Examiner's comments seem to indicate that he has failed to see and take notice of the advantages described on pages 8 to 10.

Please take note of the following from page 8 continuing onto page 9:

When formulating pymetrozine, this characteristic known as spontaneity is not obtained if a formulation is used which is originally water-free or of low water content, but has absorbed water again during storage. In contrast to the essentially water-free formulations, after storing for a period of 7 days in the appropriate test apparatus, the formulations according to the invention show a complete breakdown of the granulates into the primary particles within a few minutes.

The fact that the presently claimed formulations have this said advantage can in no way be derived from Kristinsson, or be obvious in view of the disclosure of Kristinsson. The teaching of Kristinsson says neither anything about hydrates of pymetrozine nor does it say anything about formulations containing hydrates, let alone anything about advantages of such formulations, or methods of preparation.

In view of the newly submitted claims and the arguments presented herein, Applicant respectfully requests early and favorable allowance of all claims. A Notice of Allowability is hereby requested.

Respectfully submitted,

Syngenta Crop Protection, Inc.
Patent and Trademark Dept.
410 Swing Road
Greensboro, NC 27409
(336) 632-7586



Rose M. Allen
Attorney for Applicant
Reg. No. 35,424

Date: June 25, 2003